

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Firebaugh

February 21, 2003

An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Firebaugh. ~~Freight shippers: unfair business practices—~~*Intermodal terminals: intermodal equipment: detention and per diem charges.*

Existing law imposes special regulations on various business activities but does not specifically regulate detention and per diem charges imposed by intermodal terminals on intermodal equipment used by motor carriers.

This bill would prohibit an intermodal terminal from imposing per diem or detention charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. The bill would require an intermodal terminal that prohibits, denies, or redirects the delivery of an intermodal chassis or container offered by an intermodal motor carrier to document that prohibition, denial, or redirection by providing a rejection slip to the intermodal motor carrier. The bill would require an intermodal terminal that prohibits, denies, or redirects the delivery of an intermodal chassis or container offered by an intermodal motor carrier to pay any storage or diversion fees and any other related

expenses incurred by the intermodal motor carrier as a result of the prohibition or denial.

This bill would also require a per diem or detention charge assessed by an intermodal equipment provider on an intermodal motor carrier between September 15, 2002, and February 1, 2003, to be waived, or reimbursed with interest if the assessed charge has been collected. The bill would declare the intent of the Legislature for the waiver and reimbursement provisions to apply retroactively.

~~Existing law imposes various requirements on motor carriers, including biennial terminal inspections conducted by the Department of the California Highway Patrol, and participation in the Department of Motor Vehicles' pull notice program under which the motor carrier is advised of driving record violations of drivers enrolled in the program. Existing law provides various remedies for unfair business practices.~~

~~This bill would provide that a shipper that engages a motor carrier that is not in compliance with and that does not produce evidence of compliance with, sensitive safety requirements, including the above-referenced programs, shall be primarily liable if the motor carrier is involved in an accident or in the case of cargo loss or other personal injury. The bill would also define certain acts by a marine terminal or steamship line as unfair business practices.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 28.5 (commencing with Section~~
2 ~~SECTION 1. Chapter 28.5 (commencing with Section 22928)~~
3 ~~is added to Division 8 of the Business and Professions Code, to~~
4 ~~read:~~

5
6 CHAPTER 28.5. INTERMODAL TERMINALS

7
8 22928. (a) An intermodal terminal shall not impose per diem
9 or detention charges on an intermodal motor carrier relative to
10 transactions involving cargo shipped by intermodal transport
11 under any of the following circumstances:

- 12 (1) When the intermodal terminal's truck gate is closed.
13 (2) When the intermodal terminal has restricted hours.

1 (3) When the delivery of an intermodal chassis or container is
2 prohibited, denied, or redirected by the intermodal terminal.

3 (4) When the intermodal terminal is assessed a fine pursuant to
4 Section 40720 of the Health and Safety Code.

5 (5) When the intermodal motor carrier is not notified of the
6 number of free days specified to the consignee of the intermodal
7 shipment in its contract with the steamship line.

8 (b) As used in this chapter:

9 (1) "Per diem" or "detention" mean a charge for the late
10 return of an empty intermodal container and chassis.

11 (2) "Restricted hours" means that the intermodal terminal is
12 not open for a minimum of eight hours per day and cannot finalize
13 the intermodal transaction.

14 (3) "Free days" means the number of days on which per diem
15 or detention charges will not be assessed pursuant to the
16 Intermodal Association of North America Uniform Intermodal
17 Interchange Agreement, or any applicable service contract,
18 whichever is greater.

19 22929. (a) A per diem or detention charge assessed by or on
20 behalf of an intermodal equipment provider on an intermodal
21 motor carrier for the period commencing September 15, 2002, and
22 terminating on February 1, 2003, inclusive, shall be waived.

23 (b) A per diem or detention charge assessed by or on behalf of
24 an intermodal equipment provider on an intermodal motor carrier
25 for the period commencing September 15, 2002, and terminating
26 on February 1, 2003, inclusive, and subsequently collected, shall
27 be reimbursed to the intermodal motor carrier with interest.

28 (c) It is the intent of the Legislature for this section to be applied
29 retroactively as provided in subdivisions (a) and (b).

30 22930. (a) An intermodal terminal that prohibits, denies, or
31 redirects the delivery of an intermodal chassis or container offered
32 by an intermodal motor carrier shall document that prohibition,
33 denial, or redirection by providing a rejection slip to the
34 intermodal motor carrier at the time of the prohibition, denial, or
35 redirection.

36 (b) An intermodal terminal that prohibits, denies, or redirects
37 the delivery of an intermodal chassis or container pursuant to
38 subdivision (a) shall pay any storage fees, diversion fees, and any
39 other related expenses incurred by the intermodal motor carrier as
40 a result of the prohibition, redirection, or denial.

~~22928) is added to Division 8 of the Business and Professions Code, to read:~~

CHAPTER 28.5. FREIGHT SHIPPERS

~~22928. — (a) As used in this chapter, “shipper” means a person who arranges, controls, directs, audits, pays, sets, or negotiates rates with, a motor carrier, including, but not limited to, the importer of record, the beneficial cargo owner, or third parties such as steamship lines, terminal operators, freight brokers, customs brokers, freight forwarders, nonvessel operating common carriers, or freight payment companies.~~

~~(b) As used in this chapter, “sensitive safety requirements” include all of the following:~~

~~(1) Compliance with the Department of the California Highway Patrol’s biennial inspection of terminals program.~~

~~(2) Compliance with financial responsibility requirements.~~

~~(3) Compliance with all required Department of Transportation permits.~~

~~(4) Compliance with the Department of Motor Vehicles’ pull notice program.~~

~~22928.1. A shipper that knowingly engages a motor carrier that is not in compliance with, and does not produce evidence of compliance with, sensitive safety requirements shall be primarily liable if the motor carrier is involved in an accident or in the case of cargo loss or other personal injury.~~

~~22928.2. It shall be an unfair business practice pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 for a marine terminal or steamship line to engage in any of the following with regard to an intermodal motor carrier operating at any California port:~~

~~(a) Imposing equipment handling or usage charges, including, but not limited to, the following:~~

~~(1) Storage.~~

~~(2) Detention or per diem, which are late charges for returning empty containers.~~

~~(3) Demurrage, which is a late charge for picking up full containers.~~

~~(4) Flipping, which involves moving an intermodal container from one chassis to another.~~

1 ~~(b) Refusing to interchange equipment because of a pending~~
2 ~~dispute concerning any of the following matters, until the time that~~
3 ~~the dispute has been finally adjudicated, including any available~~
4 ~~appeals:~~

5 ~~(1) Maintenance and repair invoices.~~

6 ~~(2) Billing inadequacies.~~

7 ~~(3) Late invoices sent to the motor carrier after 30 days.~~

8 ~~(4) Penalties inside terminals.~~

9 ~~(5) Offsetting of money owed against alleged debts.~~

10 ~~(c) Requiring a motor carrier to maneuver containers within a~~
11 ~~marine yard without compensation and without certification that~~
12 ~~the driver meets the same standard of training as dock labor.~~

13 ~~(d) Fixing prices for transportation services, including, but not~~
14 ~~limited to, store door moves or repositioning of equipment.~~

15 ~~(e) Threatening or initiating retaliation against a motor carrier~~
16 ~~who refuses to provide service for a noncompensatory rate.~~

17 ~~(f) Refusing the return of equipment or tender.~~

18 ~~(g) Charging usage or handling fees except during terminal~~
19 ~~operating hours.~~

20 ~~Nothing in subdivisions (a) or (b) prohibits a marine terminal or~~
21 ~~steamship line from imposing the applicable charges on the~~
22 ~~shipper.~~